

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 07-3363

United States of America,

Appellee,

v.

Jose Lopez-Rodriguez,

Appellant.

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Appeal from the United States
District Court for the Southern
District of Iowa.

[UNPUBLISHED]

Submitted: February 5, 2009

Filed: February 25, 2009

Before WOLLMAN, MURPHY, and MELLOY, Circuit Judges.

PER CURIAM.

A jury found Jose Lopez-Rodriguez guilty of illegally reentering the United States after having been deported. The district court¹ sentenced him to 63 months in prison and 3 years of supervised release. On appeal, counsel has moved to withdraw, and in a brief filed under Anders v. California, 386 U.S. 738 (1967), he argues that (1) the district court erred in adding language to the theory-of-defense instruction, and (2) the sentence was unreasonable. We affirm.

¹The Honorable Harold D. Vietor, United States District Judge for the Southern District of Iowa.

The only issue at trial was whether Lopez-Rodriguez had previously been deported. He requested an instruction informing the jury that illegal reentry required proof that he had been previously physically removed from the United States. The court agreed to give the instruction, but added language--over Lopez-Rodriguez's objection--indicating that the jury should consider all of the evidence, and that the government was not required to present a witness to testify that he or she personally watched the defendant cross the border into Mexico. The district court did not abuse its discretion in adding the foregoing language to the jury instruction. See United States v. Aleman, 548 F.3d 1158, 1166 (8th Cir. 2008) (this court reviews jury instructions for abuse of discretion and will affirm so long as instructions, taken as whole, fairly and adequately submitted issues to jury); United States v. Davis, 534 F.3d 903, 913 (8th Cir. 2008) (government's case may be based on circumstantial evidence), petition for cert. filed, (U.S. Jan. 15, 2009) (No. 08-8267).

We also find that the sentence, which was at the bottom of the Guidelines range, was not unreasonable. See United States v. Bonahoom, 484 F.3d 1003, 1005 (8th Cir. 2007) (per curiam) (reasonableness of sentence is reviewed for abuse of discretion); United States v. Lincoln, 413 F.3d 716, 717 (8th Cir. 2005) (sentence within advisory Guidelines range is presumptively reasonable on appeal). The district court properly discussed the factors it was to consider in imposing the sentence and carefully weighed those factors. See United States v. Boss, 493 F.3d 986, 987 (8th Cir. 2007) (discussing abuse-of-discretion standard).

Having reviewed the record independently under Penson v. Ohio, 488 U.S. 75 (1988), we have found no non-frivolous issues. Accordingly, the judgment is affirmed. We also grant counsel's motion to withdraw on the condition that counsel inform appellant about the procedures for filing petitions for rehearing and for certiorari.